

III. REMARKS

Claims 1-63 are pending in this application. By this amendment, claims 1, 10, 11, 29, 43 and 53 have been amended. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1-3, 12 and 13 are rejected under 35 U.S.C. §102(b) as being anticipated by Roe *et al.* (U.S. Patent No. 5,989,236), hereafter “Roe.” Claims 4-11, 14-21, 29 and 43-55 are rejected under 35 U.S.C. §103(a) as being unpatentable over Roe. Claims 22-24, 26, 28, 30-42 and 60-63 are rejected under 35 U.S.C. §103(a) as being unpatentable over Allen *et al.* (U.S. Patent No. 6,489,956), hereafter “Allen,” in view of Roe. Claims 25 and 27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Allen in view of Roe and further in view of Goyal (U.S. Patent No. 6,119,275), hereafter “Goyal.” Claims 56-59 are rejected under 35 U.S.C. §103(a) as being unpatentable over Roe in view of Glaug *et al.* (U.S. Patent No. 6,258,076), hereafter “Glaug.” This rejection is respectfully traversed for the reasons stated below.

Initially, Applicants thank the Examiner for the telephone interview of October 19, 2004 with their representatives. In the interview, the Examiner agreed with Applicants’ representatives that Roe does not teach a back guard extending vertically above the front portion of the diaper.

A. REJECTION OF CLAIMS 1-3, 12 AND 13 UNDER 35 U.S.C. § 102(b)

With regard to the 35 U.S.C. §102(b) rejection over Roe, Applicants assert that Roe does not teach each and every feature of the claimed invention. For example, with respect to independent claim 1, Applicants respectfully submit that Roe fails to teach a back guard extending vertically from the rear portion above the front portion. In the Office Action, the Office refers to Roe's background statement that "...it would be advantageous to provide an absorbent article which can be fitted to a wearer in a high-back configuration..." as allegedly disclosing the claimed back guard. However, in the telephone conference of October 19, 2004, the Examiner agreed with Applicants' representatives that the rear of the Roe diaper does not extend vertically above the front portion. Roe provides a fold-down waist feature that fastens about the waist of a wearer. Col. 7, line 7. At a least a portion of the waist feature flap may be folded downward to reduce the length of the diaper or may be left in the traditional configuration. Col. 7, line 25-28. (Abstract). When the diaper is in the traditional configuration, an adhesive on one side of the ear flap in the back of the diaper attaches to the front of the diaper. Col. 7, line 29-34. When the diaper is in the folded configuration, an adhesive on the opposite side of the same ear flap in the back of the diaper attaches to the same place in the front of the diaper. Col. 7, line 34-39. Thus in either configuration, the Roe diaper is designed such that the top front of the diaper is aligned with the top back of the diaper when worn by a user. Figure 3. In contrast, the present invention includes "...a back guard extending vertically from the rear portion above the front portion." Claim 1. As such, the back guard as included in the present invention is not aligned with the top front of the diaper as in Roe, but rather extends vertically from the rear portion above the front portion to a middle back area of a user. For the above reasons, the "high

back configuration” of Roe is not equivalent to the back guard as included in the claimed invention. Accordingly, Applicants request

that the Office withdraw its rejection.

With further respect to independent claim 1, Applicants respectfully submit that Roe also fails to teach a back guard extending vertically from the rear portion above the front portion to a middle back area of a user. As argued previously, Roe uses a fold-up member, which it refers to as a “waist feature,” to increase its longitudinal length. Col. 9, line 33. The fold-up waist feature in Roe fastens about the waist of a wearer. Col. 7, line 7. As such, fold-up member is designed to be at or near the waist. As also argued previously, the waist and middle back regions are regions of the body that are medically defined. In the Office Action, the Office argues that the “middle back area of a user” cannot be equated with the medically defined middle back area because the minimum length of 1.0 inches in the range that the back guard as included in the claimed invention would extend above the front portion would not reach a middle back area of a user, particularly on an adult diaper. However, this argument ignores the fact that an extension of 1.0 inch may reach the middle back area an infant user, particularly if the infant is small. Furthermore, the 1.0-inch lower end of the range is simply that, the lower end of a range of lengths that would be required to reach the medically defined middle back area of a user of any size. Nowhere does Roe disclose that the rear of its diaper extends vertically above the front to the middle back area of a user. The current invention, in contrast, includes “...a back guard extending vertically from the rear portion above the front portion to a middle back area of a user.” Claim 1. As such, the back guard as included in the claimed invention extends vertically above the waist region, as in Roe, to the middle back area of the user. Thus, the Roe diaper

clearly does not anticipate the incontinence garment as included in the present invention.

Accordingly, Applicants respectfully request that the Office withdraw its objection under 102(b).

With respect to dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claim 1 from which claims 2, 3, 12 and 13 depend.

Furthermore, Applicants submit that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

B. REJECTION OF CLAIMS 4-11, 14-21, 29 AND 43-55 UNDER 35 U.S.C. § 103(a)

In the Office Action, claims 4-11, 14-21, 29 and 43-55 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Roe. Applicants herein incorporate the arguments presented above with respect to independent claim 1 from which claims 4-11 depend. In particular, since Roe does not teach all the claim limitations of claim 1, Roe also fails to teach all the limitations of the dependent claims 4-11. As a result, Applicants respectfully request withdrawal of this rejection.

With specific regard to independent claims 14, 29, 43 and 53, Applicants submit that the combined features of the cited art fail to teach each and every feature of the claimed invention. For example, with respect to independent claims 14, 29, 43 and 53, as argued above with respect to independent claim 1, Roe fails to teach or suggest a back guard extending from the rear portion, wherein the back guard extends above the front portion. With further respect to independent claims 14, 29, 43 and 53, as argued above with respect to independent claim 1, Roe

also fails to teach or suggest a back guard extending to a middle back area of a user. For the above stated reasons, Applicants respectfully request that Office's rejections be withdrawn.

With regard to claims 10, 11, 14, 20, 21, 29, 43-47 and 50-53 the Office argues that a back member length range of 1.0 to 10.0 inches is obvious in light of Roe's high-back configuration. As stated above Roe does not disclose a back guard extending from the rear portion, wherein the back guard extends above the front portion. The high-back configuration of the waist feature in Roe simply allows the Roe diaper to be worn as a regular diaper at or about the waist rather than being folded down. Accordingly, as argued above, the Roe diaper's "high back configuration" does not extend the back portion of the Roe diaper vertically above the front portion by any length. Furthermore, nowhere does Roe teach or suggest a range of extension of 1.0 to 10.0 inches above the front portion. In contrast, the claimed invention may include a "...back guard [[that]] extends vertically 1.0 to 10.0 inches above the front portion." Claim 10. This range of lengths is specifically designed to provide the optimum range of lengths to allow the back member to extend to the middle back of the user, depending on the user's size. Accordingly, applicants respectfully request that the Office withdraw its rejection.

C. REJECTION OF CLAIMS 22-24, 26, 28, 30-42 AND 60-63 UNDER 35 U.S.C. § 103(a) OVER ALLEN IN VIEW OF ROE

With regard to the 35 U.S.C. §103(a) rejection over Allen in view of Roe, Applicants submit that the combined features of the cited art fail to teach each and every feature of the claimed invention. For example, with respect to independent claims 22, 30 and 60, the cited references fail to teach or suggest a back guard extending above the rear portion and the front portion when the article is worn by a user. As argued above with respect to claim 1, Roe does

not teach, *inter alia*, a back guard extending above the rear portion and the front portion. In addition, the Office incorrectly attempts to equate the extension panel in Allen with the back guard as included in the present invention. However, as in Roe, the extension panel in Allen is designed to "...be wrapped around the waist with the tabs brought into alignment and in overlapping relation to the complementary fastener bar at the opposite end of the diaper..." col. 4, line 60-63. Since the referenced tabs of Allen are shown to be at the top of the extension panel in FIG. 3A and FIG. 3B the coupling of these tabs would produce a diaper top that is the same height in the back as in the front as shown in FIG. 3C. Furthermore, the extension panel in Allen is designed to be "wrapped around the *waist*" (emphasis added). Col. 4, line 60. Nowhere does Allen disclose a back guard extending above the rear portion and the front portion. In contrast, the claimed invention includes "...a back guard extending above the rear portion and the front portion when the article is worn by a user." Claim 30. As such, the back guard as included in the claimed invention does not wrap around the waist such that the diaper top is the same height in the back as in the front as in Allen, but instead extends above the rear portion and the front portion when the article is worn by a user." Since Allen does not teach a back guard that extends above the rear portion and the front portion such as the one included in the present invention, the Allen diaper cannot be used in support of the Office's obviousness rejection. Accordingly, applicants respectfully request that the Office withdraw its rejection.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these

rejections individually, but reserves the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

D. REJECTION OF CLAIMS 56-59 UNDER 35 U.S.C. § 103(a) OVER ROE IN VIEW OF GLAUG

The Office is also in error with respect to its rejection of claim 56-59 as being unpatentable over Roe in view of Glaug et al. As argued above, Roe does not disclose the back guard as included in the present invention. Furthermore, Glaug does not disclose a front guard as included in the present invention. The second barrier panel in Glaug does not disclose a front guard as argued by the Office but instead discloses a barrier panel that uses a "...skin friendly adhesive [to] form a liquid-resistant seal with the being's skin..." (col. 4, line 8-9). This second barrier panel is designed to be placed at the front waist portion (col. 4, line 2) of the article, and the front waist portion is designed to be worn "...disposed adjacent the being's lower abdominal region..." (col. 3, line 33). It is clear that an adhesive engaged second barrier panel has nothing in common with the front guard extending vertically from the front portion to a middle chest area of a user as described in the current invention. Furthermore, while the Glaug second barrier panel is a waist portion designed to be worn in the lower abdominal region, the front guard as included in the present invention is designed to extend vertically to the middle chest area of the user. For the above stated reasons, the second barrier panel in Glaug is not equivalent to the front guard as found in the present invention, and the Office cannot use Glaug to support its rejection. Accordingly, applicants request that the rejection be withdrawn.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed

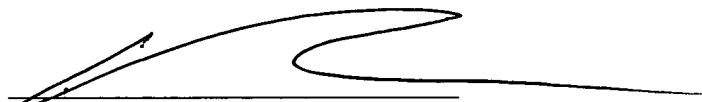
above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

III. CONCLUSION

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

Date: 11/15/04
Hoffman, Warnick & D'Alessandro LLC
Three E-Comm Square
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)



Ronald A. D'Alessandro
Reg. No.: 42,456